IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6165 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NARMADA EDUCATION & SCIENTIFICRESEARCH SOCIETY

Versus

S KUMAR

Appearance:

MR SHIRISH JOSHI for Petitioner

MR JAL S UNWALA for Respondent No. 1

MR SK PATEL, AGP for Respondent No. 3

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/10/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. Challenge has been made by petitioner, the Narmada Education & Scientific Research Society, Narmadanivas, G.N.F.C. Township, Narmadanagar, Bharuch, to the order of the Gujrat Affiliated Colleges Service Tribunal at Ahmedabad dated 10th March, 2000, in Application No.58/99 of the respondent No.1. The Tribunal in paragraph-5 of the order has held:

> "5. After hearing both the respective parties, I have come to the conclusion that the applicant has joined the respondent college as a Principal and as a service condition, he was allotted the quarter by the respondent management. During such period the respondent management has suspended the applicant and thereafter dismissed him from the service but the applicant has challenged both the orders of the respondent-management before this Tribunal which are pending for final hearing. So till date the applicant has not retired from the service and the respondent management has not settled any dues of the applicant to which he is entitled to. In that case if the applicant is in possession of his quarter as a part of service condition, he is entitled for possession of the quarter till final disposal Applications No.9/96, 52/97, and 119/98. The applicant is not in receipt of any dues from the respondent management till date as per the order of the Hon'ble High Court. Interim relief is confirmed till final disposal of this application. S.O. to 25.4.2000."

#. It is not in dispute that the respondent No.1 was given the quarter in question as he was in service of the petitioner. It is also not in dispute that the respondent No.1 was placed under suspension in contemplation of departmental inquiry and after completion of departmental inquiry, he was dismissed from the service. After dismissal from service, the respondent No.1 has not vacated the quarter. The respondent No.1 has challenged the order of the petitioner placing him under suspension as well as dismissing him from services before the Tribunal and those applications are pending. The learned counsel for the respondent No.1 admitted that the Tribunal has not

granted any interim relief in favour of respondent No.1, meaning thereby, the operation, implementation and execution of the order of dismissal of his from the services has not been stayed. So long as the order of dismissal is there, relationship of employee and employer in between the respondent No.1 and the petitioner comes to end. There cannot be any justification in the action of the respondent No.1 to insist for continuing in the occupation of the quarter. In fact, looking to the post which the respondent No.1 was withholding in the college of the petitioner, on his dismissal from services, he should have voluntarily vacated the quarter, but he did not do so. Contrary to it, after his dismissal from services, the petitioner has taken action in the matter for retention of the possession of the quarter, he approached the Tribunal and the Tribunal has passed the impugned order. The Tribunal has committed serious illegality in granting interim relief in favour of respondent No.1 protecting his possession of the quarter. It is true that dismissal order has been challenged by respondent No.1 before the Tribunal and that matter is sub judice but only on this ground, I fail to see any justification in the approach of the Tribunal to protect his possession over the quarter. The Tribunal has not considered this aspect of the matter that dismissal has not been stayed. This approach of the Tribunal that till the applicant has not retired from the services and the respondent management has not settled any dues of the applicant to which he is entitled, he is entitled to retain possession of the quarter is wholly perverse. Where is the question of settlement of dues on retirement. Here, the respondent No.1 was dismissed from services. Only in case ultimately the dismissal order is set aside by the Tribunal, the question may come of his retirement and payment of dues of retirement. Otherwise also, in such cases, in case the quarter is ordered to be vacated, it will not cause any irreparable injury to the respondent No.1 nor the balance of convenience favours for grant of interim relief in his favour. If ultimately he succeeds in the matter, the dismissal order is set aside and he is ordered to be reinstated back in service, certainly the petitioner has to restore the possession of the quarter also. But merely on the pendency of the litigation and the respondent No.1 has not been protected therein admittedly, the respondent No.1 cannot be permitted to continue in possession of the quarter. He was in possession of the quarter, no doubt as a part of service condition, but after dismissal this relationship of employer and employee comes to an end and he has no right to continue in the quarter.

#. Otherwise also, the respondent No.1 has not disputed that since 14.11.1994, he is working as Director of Training and Placement in Bapurao Deshmukh Engineering College, Sewagram, District: Wardha, Maharashtra. There he has been provided with accommodation by the college on rental basis. The learned counsel for the petitioner submits that in view of this fact, the respondent No.1 is not in fact, utilizing this quarter also for his own use and I find sufficient justification in the contention of the learned counsel for the petitioner that it will not serve any purpose of respondent No.1 also in case he is allowed to continue the quarter under his lock.

#. Taking into consideration the totality of the facts of the case, the order of the Tribunal impugned in the special civil application is wholly perverse and it cannot be allowed to stand and accordingly the same is quashed and set aside. Rule is made absolute. It is open to the petitioner in case the respondent No.1 does not hand over the vacant possession of the quarter within one month from the date of receipt of notice sent to him by registered post A.D. by petitioner to his address as given in the letter of District Magistrate, Wardha, dated 24.4.2000 to take the possession of the quarter by breaking open the lock and to remove the household articles, furniture etc. belonging to respondent No.1 under the Panchnama to be prepared by the incharge of the police station of the area in which this quarter is situated in the presence of an officer from South Gujarat University not below the rank of Deputy Secretary and being witnessed by independent witnesses. The incharge of the police station of the area concerned and University is directed to remain present for this work on the request of the petitioner. Similarly the University will send officer of the rank aforesaid on the request of the petitioner for the same. Rule is made absolute in aforesaid terms. In the facts of this case, no order as to costs.

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(sunil)